IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 4th day of June, 1998

Before:

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Writ Petition No. 8273 of 1993

D.P. Sharma,
s/o late Sri Dhanaraj Sharma,
17, Albert Victor Victor Road,
also resident of 328, Sangeetha
Bhavan, Tippu Sultan Palace Road/
A.V. Road, Kalasipalyam,
Fort, Bangalore-2 ..Petitioner

(By Sri S. Shekhar Shetty, Advocate)

-Vs-

1. Bangalore Mahanagara Palike,
/Corporation of the City of
Bangalore, by its Commissioner,
NR Square, Bangalore-2;

2. The Asst. Revenue Officer,
Corporation of the City of Banga-
lore, Chamarajapet, Sub-Division,
Office at J.C. Road, Bangalore-2 ..Respondents

(By Sri S.N. Prashanth Chandra, Advocate)

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Writ Petition is filed praying to quash the order vide Annexures 'F' and 'H' dated 5-2-1993 and 4-3-1993 respectively, etc.

This writ petition coming on for preliminary hearing in 'B' Group this day, the Court made the following:-

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O R D E R

The petitioner claims to be the owner of premises No.17, Albert Victor Road, Bangalore. The petitioner, by letter dated 29-5-1991 informed the Bangalore City Corporation ('BCC' for short) that the said premises was vacant in view of certain litigation and sought remission in property tax by letter dated 29-5-1991. The Corporation issued an endorsement dated 13-1-1992 seeking certain particulars. The petitioner furnished the said particulars as per letter dated 29-2-1992. Thereafter, the Corporation issued a show cause notice dated 5-2-1993 (Annexure-F) under Section 147 read with Rule 27 of Schedule III to the Karnataka Municipal Corporations Act, 1976, calling upon the petitioner to show cause why a sum of Rs.73,687-50 due by way of property tax at the rate of Rs.14,737-50 for the years from 1988-89 to 1992-93 should not be recovered by treating the petitioner as a defaulter. Petitioner claims to have filed objections to the said notice as per letter dated 10-2-1993 (Annexure-G). The petitioner's grievance is that without considering the said objections and passing appropriate orders

thereon, the second respondent issued an endorsement dated 4-3-1993 (Annexure-H) referring to petitioner's application dated 18-2-1993, calling upon the petitioner to pay a sum of Rs.73,687-50 towards 75% of the amount demanded. Petitioner feels aggrieved. Hence, he has filed this petition for quashing Annexure-F and H.

2. The petitioner contends that where a proposed assessment has not yet become final and the matter is pending consideration, no notice of demand could be issued by the Corporation, relying on the decision of this Court in **KARNATAKA STATE CONSTRUCTION CORPORATION LIMITED V. B.C.C.,** ILR 1994 KAR 2968. The said decision is not applicable to the case of the petitioner, as no assessment proceedings are pending. Annexure-F (Notice dated 5-2-1993) is not a show cause notice regarding any proposed revision of the Annual Value or property tax. It calls upon the petitioner to show cause why action should not be taken to recover the amount mentioned therein by treating the petitioner as a defaulter as the petitioner failed to pay the taxes due for the period 1988-89 to 1992-93. The said show cause notice issued under Rule 27 of

schedule III to the Act. The matter is not at the stage of determination of annual value and property tax. The only subject matter of the notice was whether the amount should be recovered from petitioner by treating him as defaulter.

3. The petitioner contended that his request for remission under Section 113 of the Act is pending and, therefore, the amount demanded could not be recovered. Section 113 of the Act provides for vacancy remission. According to sub-section (1) of Section 113 of the Act, when any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for thirty or more consecutive days in any half year, the Commissioner shall remit so much, not exceeding one-half of such portion of the tax as relates to the building only as is proportionate to the number of days during which the building was vacant and unlet in the half-year. Sub-section (2) provides that every claim for remission under sub-section (1) shall be made during the half-year in respect of which the remission is sought or in the following half-year and not afterwards. As the request for remission was made by the petitioner

only on 29-5-1991, the request can be related only to the period 1-4-1991 to 30-9-1991 or the earlier period i.e., 1-10-1990 to 31-3-1991 having regard to the wording of Section 113(2). The request for remission cannot apply to any period prior to 1-10-1990. Having regard to the fact that the ~~liability for~~ tax for 1988-89 and 1989-90 and first half of 1990-91 is indisputably due and as even for the remaining period, the remission even if it is granted could be only for 50%, it cannot be said that the demand for payment of 75% under Annexure-H is unreasonable or arbitrary.

4. There is no merit in this petition and petition is, therefore, dismissed. The respondents are, however, directed to consider and dispose of the petitioner's request for remission contained in his letters dated 29-5-1991 and 29-2-1992 for the permissible period in accordance with law within a period of two months from the date of receipt of this order.

Sd/-
JUDGE

Bnr/ujk